

February 4, 2022

File: 63645-14

VIA ELECTRONIC MAIL ONLY

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Re: Three Arch Bay Association - Hoch Architectural Matter

Subject: Association Approval Required for Modifications

Dear Mr. Stahl and Mr. Nokes:

As you know, we are legal counsel to Three Arch Bay Association (Association). I am writing to you in light of the action by the City of Laguna Beach Design Review Board last week with regard to the construction proposed by your clients, Mike and Marcie Hoch, at 44 So. La Senda Drive, Laguna Beach (the Property). I understand that both of you are counsel for the Hochs. If that is not the case or if I should direct this communication to someone else, please let me know.

In short, as explained below, the Hochs must not make any modification to the Property, regardless of any approval by the City. Any construction activity at the Property will result in legal action by the Association, including an application for temporary restraining order and preliminary injunction.

The Association's Architectural Review Board (ARB) denied the Hochs' application to modify and develop the Property on March 3, 2021, after a long and thorough process. The bases for the denial are set out in the Association's March 17, 2021 letter to the City. Despite this denial, the Design Review Board adopted a resolution approving design review and a variance for the Property on January 27, 2022. This decision remains subject to appeal to the Laguna Beach City Council.

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Even though the City may approve the proposed modifications, and even if the City were to issue a building permit, the Hochs are prohibited from any modification by the terms of the deed restriction recorded against the Property on August 13, 1931, and the provisions of the Association's Bylaws and other governing documents. A copy of the deed is attached.

The Hochs and others have asserted that no restrictions bind the Property, that any recorded restrictions have expired, and they are free to build and develop as they wish without Association approval. These assertions are untrue. Paragraph 2 of the 1931 Grant Deed conveying the Property states:

All exterior (sic) building plans for a building or structure of any kind to be erected, placed or maintained upon said real property, together with the accompanying specifications, shall be submitted for approval to a Committee to be known as an "architectural Committee"; . . .

The paragraph goes on to state:

No structure of any kind shall be erected or maintained upon said real property until the plans therefor and the location of said structure on said real property shall receive the written approval of at least two members of said committee . . .

The Association's ARB is the architectural committee identified in the deed. Article V, Section (3)(b) of the Bylaws obligating the ARB to enforce all recorded deed restrictions at Three Arch Bay, makes this clear.

These restrictions remain in effect today. According to Paragraph 6, ". . . the conditions and covenants in paragraph 2 shall be perpetual." Further, the deed expressly states that the breach of its provisions may be enjoined, abated or remedied by appropriate proceedings. Such proceedings include an action for injunctive relief and damages in the Orange County Superior Court.

The Hochs purchased the Property subject to this restriction. Based on its unequivocal language, they are prohibited from erecting any structure of any kind, including their proposed substantial modification, because they do not have architectural approval.

The Hochs are also obligated to abide by the Association's governing documents, because they are members of the Association. Not only do the Bylaws require the Association to enforce all deed restrictions (per Article V, Section (3)(b)), the members of the Association voted to approve Architectural Guidelines which became effective September 2019. These Guidelines empower the ARB to approve all development projects in Three Arch Bay (Article II, Section 2.3), and they include comprehensive standards and procedures for obtaining approval.

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Should the Hochs violate these provisions of the Bylaws and Guidelines, they face not only litigation, but revocation of their membership as well. This penalty is set out in Article I, Section 3 of the Bylaws, and in Article I, Sections 1.3.1 and 1.3.2 of the Rules and Regulations. If their membership is revoked, the Hochs will be barred from using the Association private streets, except for ingress and egress to their property (Rules, Article I, Section 1.4.1); from parking on Association streets (Section 1.4.2); from using RFD or similar devices to enter the community (Section 1.4.3); from use of any Association recreational facilities, including beach access (Section 1.4.4); and from exercising the right to inspect documents, vote, and serve on the Board (Sections 1.4.5 - .7).

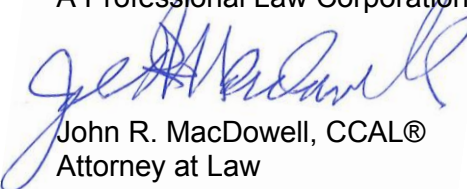
Moreover, as you are aware, the Hochs do not have the consent or right to use Three Arch Bay property in their Application to the City for Permits, including without limitation, parking, the calculations of the applicable ratios or in the variance application. Their proposed modification is in breach of the deed restriction and Association governing documents for all the reasons set out above. The Association reserves all rights and remedies including termination and ejection of existing or future improvements in or on the Association property.

Any act toward the commencement of construction will result in legal action. The Hochs may not modify or alter the landscaping or exterior of the structure on the Property. They may do no demolition or addition.

Should the Hochs wish to seek ARB approval of modification or development at the Property, they are free to do so in compliance with the provisions of the deed restriction and all governing documents.

Very truly yours,

FIORE, RACOBS & POWERS
A Professional Law Corporation


John R. MacDowell, CCAL®
Attorney at Law

JRM:JRM
Attachment: Grant Deed dated August 13, 1931
cc: Board of Directors (by email)
L. Sue Loftin, Esq.